

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS

CRAIG SHIPP,

Plaintiff,

vs. NO. 4:18-CV-04017-SOH

CORRECT CARE SOLUTIONS, LLC;  
DR. LORENE LOMAX; DR. MIMO  
LEMDJA, et al.

Defendants.

DEPOSITION OF SHAWN SMITH, M.D.  
TAKEN ON BEHALF OF THE DEFENDANTS  
ON JUNE 13, 2019 AT 1:30 P.M.  
IN OKLAHOMA CITY, OKLAHOMA

## APPEARANCES

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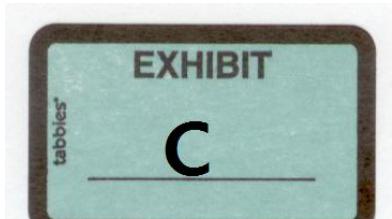
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(Appearances continued on the following page)

REPORTED BY: Abby Rhodes, CSR, RPR



1 office usually in the afternoons.

2 Q And what type of patients do you treat here?

3 A If you look at all-comers for rehab, I see a  
4 lot of people on follow-up from the hospital, so  
5 that's going to be patients with strokes, spinal cord  
6 injuries, amputations, head injuries. I do diagnostic  
7 EMG studies. I see -- I evaluate patients for  
8 workers' comp and so I'll be treating some of the  
9 multi-trauma patients and see them and follow up in  
10 the office.

11 I do some chronic pain management still and  
12 then I do a lot of just evaluations, whether it's, you  
13 know, insurance company for disability or evaluation  
14 for medical legal cases like this.

15 Q Okay. And physiatry, is that your current  
16 area of practice?

17 A Yes.

18 Q Okay. Have you ever practiced orthopedics?

19 A Well, part of physiatry includes some  
20 training in orthopedics, not so much in the cutting  
21 and screwing and drilling but more of the after care.

22 Q The postoperative care.

23 A So I take care of a lot of people before and  
24 sort of tee those patients up, especially, like  
25 spine-type patients, or I take care of a lot of the

1 orthopedic patients afterwards in terms of fractures,  
2 amputations, multi-trauma. So even though I'm not  
3 board certified in orthopedics, I've had quite a bit  
4 of experience and training in taking care of those  
5 types of patients.

6 **Q** Okay. Since you probably see most  
7 patients -- well, do you see very many patients with  
8 charcot foot?

9 **A** I see, you know, maybe a couple a year in  
10 the course of treatment, whether they're in the office  
11 or, you know, perhaps after treatment for ulcers or  
12 amputations.

13 **Q** Okay. And the majority that you see, are  
14 they post amputation or...

15 **A** I've seen some -- some of both. I mean,  
16 they don't come to my office specifically with a  
17 charcot joint per se, so I'll have some -- I see a  
18 diabetic -- I see diabetics every day in my practice,  
19 so I'll run across people who have had charcot joints  
20 in the course of just rehabilitating them for other  
21 things or I'll see them after an amputation.

22 **Q** Okay.

23 **A** Or a surgery.

24 **Q** All right. Do you consider yourself an  
25 expert in the care of a diabetic foot?

1 of medical certainty?

2 **A** Yes.

3 **Q** Have you done all the work that you think  
4 has been necessary to form your opinions today?

5 **A** Yes.

6 **Q** All right. Did you ask for any additional  
7 medical records or information on Mr. Shipp in order  
8 to be able to render your opinions?

9 **A** I did not.

10 **Q** Were you told you would get some additional  
11 records?

12 **A** No, I was told if I needed anything, they'd  
13 try to get it, but I was not told there are additional  
14 records forthcoming.

15 **Q** All right. And does this letter represent  
16 your full report to date?

17 **A** This represents my full documented report  
18 today.

19 **Q** Okay. And do you know -- and -- the foot  
20 that we're talking about today?

21 **A** The right foot.

22 **Q** Right. Okay.

23 **A** Correct.

24 **Q** Now, when I was looking at your letter, you  
25 kind of -- you noted all of the records, the providers

1 recognized that by around week three or so he did  
2 get --

3       **Q**     Okay.

4       **A**     -- some form of orthotic.

5       **Q**     Right.

6       **A**     It was just a little confusing because down  
7 in other records when he was at the other medical unit  
8 it said he hadn't gotten them yet, so...

9       **Q**     Okay. All right.

10           If you skip down a few sentences, you state  
11 "The pressure ulcers on the right foot that developed  
12 due to lack of appropriate support and protection with  
13 prescription orthotics and shoe wear never healed and  
14 was the proximate cause for his subsequent  
15 below-the-knee amputation on July 31, 2017."

16           Is that correct?

17       **A**     Yes.

18       **Q**     Okay.

19       **A**     That's what it says.

20       **Q**     Do you consider other outside factors that  
21 may have contributed to his ulcer not healing when you  
22 made that opinion?

23       **A**     Do you mean were there other things that  
24 affected his inability to heal?

25       **Q**     Yes, sir.

1           **A**     Yes.

2           **Q**     Okay. Can you tell me what those are.

3           **A**     Diabetes, charcot foot, and just the  
4 severity of the wound as it developed.

5           **Q**     Okay. Now, that's a year and a half of  
6 time.

7                   Do you know how the patient handled his foot  
8 care or his diabetic condition during that year and a  
9 half?

10          **A**     Well, I know what was documented in the  
11 records I reviewed, but I couldn't tell you what he  
12 did every day about it.

13          **Q**     Okay. Do you recall reviewing records where  
14 he was repeatedly not using the wheelchair that he had  
15 been told to use?

16                   MR. FRANSEEN: Object to form.

17                   THE WITNESS: Do you mean the records that  
18 Dr. Peeples was alluding to in his report?

19          **Q**     (By Ms. Odum) The -- yeah, the --

20          **A**     Because I saw several documents like that.  
21 I looked through thousands of pages trying to find  
22 those specific instances and I couldn't find those in  
23 there, so...

24          **Q**     Okay. Let's see. I'm going to hand you  
25 Peeples 102. The plan is "wheelchair for now to

1 offload his foot completely." That's March 10.

2       **A**     So is there something in here saying he  
3 didn't do that?

4       **Q**     Yes, sir. Oh, man. I think this is when  
5 the photo copier had a problem.

6       **A**     Okay. I'm confused. What's the question  
7 about this?

8       **Q**     I wanted to know if you read the numerous  
9 references by nursing staff that the resident was  
10 walking into the infirmary without his wheelchair from  
11 the 11th, the 12th, the 13th, the 14th, the 15th, the  
12 16th, March 22.

13      **A**     Does that say that on here? Because I'm...

14      **Q**     No, sir, that's the first record.

15      **A**     Yeah, well, that's what why I was asking  
16 what you were having me look at this for.

17      **Q**     That he was instructed to stay in the  
18 wheelchair.

19      **A**     I did see this, this specific page where it  
20 said "wheelchair for now to offload his foot  
21 completely," yes, I did see that.

22      **Q**     And we may have to go off the record. I  
23 gave Staples things to photocopy and I'm missing  
24 several pages. Okay. Well, here's one.

25      **A**     Okay. I do see the document in here that he

1 walked in medical without a wheelchair, yes.

2 Q Okay.

3 A That's on --

4 Q And I'm just going to hand you a few --

5 A That's on March 16.

6 Q Yes, sir.

7 A And this is the same day, it documents the  
8 same thing. And then this is, let's see, a week later  
9 and this documents that he picked up bags and put it  
10 in his wheelchair and pushed the wheelchair. So I did  
11 see references from Dr. Peeples about that, but I  
12 didn't see that exact report.

13 Q Okay. And there are several others.

14 MR. FRANSEEN: Object to the form.

15 Q (By Ms. Odum) We can go off the record for  
16 me to get the notebook if you'd like to review them.

17 A Well, if they're the same references that  
18 Dr. Peeples made, I mean, I don't doubt that he has  
19 gotten through there and found those.

20 Q Okay. So if a -- if a patient that was  
21 recently diagnosed with diabetic foot ulcers is not  
22 following instructions to be non-weightbearing, does  
23 that have any bearing on whether the ulcer heals?

24 A Well, I think if a patient has the  
25 opportunity to offload and not weightbear and have

1 full control of their abilities and they didn't do it,  
2 that would definitely have an affect on healing.

3       **Q**     Okay.

4       **A**     Last time I checked, you know, most people  
5 who were incarcerated aren't in there because they  
6 follow the rules or because they follow through with  
7 what they're supposed to do, so, and, you know, my  
8 understanding of the people I saw during training  
9 from -- from prisons is usually that there's specific  
10 rules they have to follow that are outside of what you  
11 and I would consider the independent things we can do  
12 daily.

13       **Q**     Okay. But if he had access to a wheelchair  
14 and was told to remain weightbearing or  
15 non-weightbearing, would you expect the patient to  
16 follow that rule, that instruction?

17       **A**     I'd expect him to follow it most of the  
18 time, but I wouldn't expect him to do it all the time.

19       **Q**     Okay. What about if it's a fresh ulcer like  
20 in this case?

21       **A**     Well, I mean, you can walk without putting  
22 weight on that ulcer as well, and I don't know by that  
23 documentation what he was actually doing other than  
24 pushing a wheelchair, so I don't know how he was  
25 protecting his foot.

1           **Q**     Okay. So the patient doesn't have  
2 responsibility to try to assist in his care?

3           **A**     Oh, he does without a doubt.

4           **Q**     Okay. Now, if he is -- should he be  
5 purchasing junk food on commissary if he's trying to  
6 have a diabetic ulcer heal?

7           **A**     Well, I don't know what his blood sugars  
8 were during that time period.

9           **Q**     Okay.

10          **A**     If his blood sugars were what they -- what I  
11 saw during the documented follow-up visits, they were  
12 running between, anywhere from 100 to 180. So if his  
13 sugars were generally 100 so 180, then I wouldn't have  
14 a problem with him eating those types of food from the  
15 commissary.

16          **Q**     Okay. Yeah, we're going to have to take a  
17 break in a minute because -- did you read the column  
18 and carry note when they removed his cast in March of  
19 2016 after he was walking around on the foot and had  
20 to have his cast removed?

21          **A**     Are you talking about where the cast was  
22 rubbing on his toe?

23          **Q**     Yes.

24          **A**     I did read about the cast rubbing on his  
25 toe.

1           **Q**     Out of prison.

2           **A**     Out of prison, you know, I believe my  
3 patients are, at least at this point in my life, are  
4 all grown-ups, so it's my job to educate them on  
5 what's the best way of caring for themselves, and I  
6 hope that they follow those rules, but, you know,  
7 that's not my job to be their mama or their daddy.

8           **Q**     Okay. I'm going to hand you Peeples 402.  
9 This was from September 2016, some weeks after his  
10 release.

11           Do you see Mr. Thomas' note? I don't know,  
12 they put it on weird paper. I'm sorry.

13           **A**     No, that's fine.

14           **Q**     When he comes in for that particular visit?

15           **A**     Are you talking about the part under --

16           **Q**     Yes, sir.

17           **A**     -- physical exam?

18           **Q**     Yes, sir.

19           **A**     Yes, the chief complaint.

20           **Q**     Okay.

21           **A**     I do.

22           **Q**     Do you see her notation there?

23           **A**     I do.

24           **Q**     Okay. She actually capitalized the word  
25 "shoes."

1           **A**     She did.

2           **Q**     Does that demonstrate that he is being  
3     noncompliant with her directions?

4           **A**     Well, let me read this and see what it says.

5           **Q**     Sure.

6           **A**     So it says "The treatment includes zero  
7     casting, IV antibiotics, and weekly trimming. Last  
8     week he elected to try no cast to be  
9     non-weightbearing. Despite this plan, he arrived to  
10    today in shoes on both feet."

11           So that would tell me that she recommended  
12    he be non-weightbearing without a cast from the  
13    previous week and that day he was not compliant.

14           **Q**     Okay. And there's no way to know whether he  
15    was compliant or not when he was not physically in the  
16    medical setting; is that correct?

17           **A**     Not that I'm aware of, no.

18           **Q**     Okay. Now, you mentioned -- did you know  
19    his history of alcoholism before he went into the  
20    prison?

21           **A**     Did I know about it?

22           **Q**     Yes, sir.

23           **A**     Was I aware of it, yes.

24           **Q**     Okay. And did you know that's why he was in  
25    prison?

1           **Q**     Okay.

2           **A**     Certainly would mean they'd need to have  
3     supervision with whatever they're doing wherever  
4     they're at.

5           **Q**     Okay. And so would Mr. Shipp, if he had a  
6     guardianship, would that mean he needed some  
7     supervision once he was out of prison?

8           **A**     In and out of prison, he'd need supervision.

9           **Q**     Okay. And if he demonstrated his -- a  
10    failure to follow simple orders such as staying in a  
11    wheelchair while he's in prison, in your experience as  
12    a doctor handling these type of patients, would he be  
13    expected to be responsible and follow doctors'  
14    directions when he's out of prison?

15          **A**     I'm not sure I understand your question.  
16    Can you -- can you clarify that for me?

17          **Q**     If he's noted several times to not use a  
18    wheelchair that he was told to use because of the  
19    serious nature of his foot and he -- the record  
20    demonstrates he did not, and his letter to his sister  
21    demonstrates that he did not, would you expect that  
22    person when he has no supervision to follow the rules  
23    set out by the doctor?

24          **A**     Well, it depends on what the rules are. I  
25    mean, in the records that I reviewed, one of the

1 reasons he wasn't using the wheelchair is because it  
2 was hurting his shoulders. I don't know if he was  
3 asked to use the wheelchair at home or not or whether  
4 he was offered the crutches that he had asked for when  
5 he was in the prison.

6 So that's why I'm a little confused about  
7 your question because I don't know which specific  
8 doctor order we're talking about, something that  
9 happened while he was there or something afterwards.  
10 And you're talking about something afterwards, and I  
11 don't really know what orders they gave him to do.

12 **Q** Okay. Well, Dr. Thomas wanted him to be  
13 non-weightbearing and he came in a week later wearing  
14 shoes.

15 **A** That's what she documented, yes.

16 **Q** Okay. And that would indicate a  
17 non-compliant patient?

18 **A** On that day, yes.

19 **Q** And you have no idea how compliant he was  
20 from that point.

21 **A** Nor do you.

22 **Q** Right. So we would have to speculate  
23 whether he was compliant or not.

24 **A** Well, we'd have to use the information at  
25 hand, and the information at hand shows that when he

1 was supervised, his blood sugars were under reasonable  
2 control, he got better in some instances, but the size  
3 of the one particular wound never healed. He healed  
4 his left wound and he was compliant with coming for  
5 his treatments, whether it was whittling on his feet  
6 or hyperbarics or wound care.

7 So he did show some efforts in terms of  
8 wanting to save his foot and being compliant with  
9 treatment; it just so happens he didn't use the  
10 wheelchair the day he saw the doctor.

11 Q Well --

12 A And you're right, I don't know what he did  
13 on any other day.

14 Q Okay. And you said while he was supervised?

15 A Yes, I did say that.

16 Q Okay. What about when he -- did you see  
17 what his A1c level was when he was released from  
18 prison?

19 A Are you talking about in August or...

20 Q Yes, sir, in August of 2016.

21 A I don't recall a specific one in August. I  
22 know that the -- between May and July, his sugars ran  
23 between 100 and 150 which would be consistent with a  
24 hemoglobin A1c right around 7 to 7.2 range, which I  
25 think is the one I saw in there, but I don't know if

1 it was right when he left or not.

2 Q Okay. I'm going to hand you Peeples 360  
3 which is a record from River Valley. There's an  
4 August 16, 2016 record and a February 17, 2007.

5 A This was when he was in the medical  
6 incarceration facility?

7 Q He was released August -- in August, I think  
8 August 10.

9 A Okay. So this is like the week after?

10 Q The week after, and then the next one is six  
11 months later.

12 A Yes.

13 Q Do you see what his A1c levels are when he  
14 was released right after he was released?

15 A 6.8.

16 Q Okay. And what was it six months later when  
17 he's on his own?

18 A What's recorded in here is 13, but when I  
19 tried to look back in those records to correlate a  
20 blood sugar, because, I mean, if your hemoglobin is  
21 A1c 13, your blood sugar should be 375 or higher,  
22 which means he should have been hospitalized, and I  
23 looked through all those medical records during that  
24 time period and there wasn't one blood sugar that  
25 documented anything in that range.

1                   And the only thing I saw about blood sugars  
2 was his had been in the same range it had been for a  
3 while, so I don't know what to make of that particular  
4 number because certainly you'd want to correlate it  
5 with actual blood sugars.

6                   **Q**       Did you see any records from that time  
7 period from River Valley where he said that he really  
8 wasn't paying attention to his blood sugars?

9                   **A**       During the River Valley time?

10                  **Q**       Yes, sir.

11                  **A**       I know he reported that before he was  
12 incarcerated he wasn't, but they were checking his  
13 blood sugars routinely there.

14                  **Q**       Okay. You don't recall him saying that he  
15 wasn't paying close attention to his blood sugar  
16 during that time period after his release?

17                  **A**       I don't recall that, but if you look at his  
18 sugars during that time period, they did pretty good.  
19 This hemoglobin A1c is something that most diabetics  
20 would want.

21                  **Q**       The 6.8 right after his incarceration?

22                  **A**       Yeah. That was right during that time  
23 period that he supposedly wasn't worried about his  
24 diabetes.

25                  Is that what you're asking?

1           **Q**     No, I'm asking about after he's released  
2 from prison six months later.

3           **A**     Oh, okay. No, all I saw when there was  
4 questions about the diabetes was he said he was eating  
5 the same thing he normally does.

6           **Q**     Okay. So you did see that?

7           **A**     That one sentence, yeah.

8           **Q**     Okay. In the records that you have, did you  
9 see where he admitted that he was not keeping up with  
10 his blood sugars?

11          **A**     That he wasn't checking them?

12          **Q**     Correct.

13          **A**     Oh, I'm sure I saw at least two times where  
14 it said that, but I couldn't tell you exactly when  
15 that was.

16          **Q**     Okay. Well, if a person's not checking his  
17 blood sugars and he's trying to heal, does that affect  
18 diabetic foot ulcers?

19          **A**     If his sugars are good, no.

20          **Q**     But what if his A1c is 13 or 12.8?

21          **A**     Well, that's what I'm -- that's what I'm  
22 saying. If his sugars -- if his hemoglobin A1c was  
23 really that high then we would have seen sugars all  
24 through that course of care in the 300-plus range and  
25 he would have been in the hospital with that kind of

1 blood sugar.

2 Q Okay. Well --

3 A And I didn't see anything in there because I  
4 specifically went back to look after Dr. Peeples  
5 mentioned that because obviously that would affect  
6 things if -- if your blood was 380 all the time, but I  
7 couldn't find anything in there to correlate with that  
8 number.

9 Q Okay. Did you --

10 A So I don't know if that's a real number or  
11 not.

12 Q Did you find one where it was 12.8?

13 A The hemoglobin A1c --

14 Q Yes, sir.

15 A -- is that what you're saying?

16 Q Yes, sir.

17 A Yeah, but I didn't see any sugars to  
18 correlate with that, and without a blood sugar to  
19 correlate with that, you don't know if that's his  
20 hemoglobin A1c or somebody else's.

21 Q The record says it's his; is that correct?

22 A The record documents that number, but they  
23 don't document anything else that correlates with  
24 that, so --

25 Q Okay.

1           **A**     -- in my experience in documentation  
2 records, if I'm going to believe that number, I'm  
3 going to want to see the data that goes along with  
4 that, and I just didn't see it, so I...

5           **Q**     Did you --

6           **A**     From my experience, I would say that that's  
7 not necessarily his hemoglobin A1c.

8           **Q**     Did you see a record from January that  
9 showed an A1c of 12.8?

10          **A**     There was one in January, yes.

11          **Q**     Okay. So we have January that says 12.8 and  
12 we have February that says 13, so are you saying they  
13 made two mistakes?

14          **A**     I'm just saying I don't have any blood  
15 sugars to go along with that, and without a blood  
16 sugar to go along with that and otherwise  
17 documentation of being compliant with his wound care,  
18 it's hard for me to say that that pushed him over the  
19 edge one way or the other.

20          **Q**     So would you want more records, then, so you  
21 can figure out if he was -- what his blood sugars were  
22 if he was compliant?

23          **A**     I don't think there are any more records,  
24 otherwise I would have probably seen them by now,  
25 so...

1           **Q**    You don't think there are any more?

2           **A**    Do you have any records that you want to  
3 show me that tells me one way or the other about that?

4           **Q**    Well, I was curious if you've asked for any  
5 other records because, you know, you're giving your  
6 opinions, so I just want to know if that rang a bell  
7 for you that maybe you needed to verify that there  
8 weren't any more others --

9           **A**    I looked through all the records I had to  
10 try to verify that number as being accurate, and I  
11 don't have anything in the records to support that,  
12 so --

13          **Q**    Okay.

14          **A**    -- right now I don't have any data to  
15 support those numbers.

16          **Q**    Okay. And you don't have any evidence that  
17 they're wrong?

18          **A**    I do not.

19          **Q**    Okay. If that is, in fact, correct, is  
20 that -- would that reflect a compliant patient?

21          **A**    With regards to diabetes? No.

22          **Q**    Yes, sir.

23           And if you have a diabetic that his blood  
24 sugars jump that drastically from 6.8 to 12.8 and 13,  
25 is that -- would that negatively affect a diabetic

1           **A**    Over time, every diabetic has to worry about  
2 renal disease.

3           **Q**    Okay. But high blood sugars over time for a  
4 couple of months would negatively affect the healing  
5 of a diabetic foot ulcer; correct?

6           **A**    High blood sugars will affect ability to  
7 heal, yes.

8           **Q**    Okay. Did you read Dr. Seiter's records  
9 about a bone -- his decision to do a bone biopsy in  
10 June of 2017?

11          **A**    Do you have a specific record for me to look  
12 at? Because I don't remember it that way.

13          **Q**    Okay. I'm going to hand you Peeples 55 --  
14 455, 462 -- sorry, 463, 66, and 6 -- 75.

15          **A**    So is there something about a bone -- a bone  
16 biopsy in here?

17          **Q**    Yes, sir, starting on that first page, that  
18 little bit to the right when he reports to the ER.  
19 Probably where your thumb is.

20          **A**    No, I see what you're talking about; I was  
21 just looking at the date.

22          **Q**    Oh, sorry.

23          **A**    Okay. So I see that there was -- he had a  
24 bone biopsy done on a Monday, and I don't know if this  
25 date was a Monday or after the Monday, but then he

1 requested amputations because of the pain and  
2 disability associated with a deformed limb, but  
3 usually that's related to trauma and not so much  
4 diabetes.

5       **Q**     Right. Okay. Do you remember recalling any  
6 of the records from when he was still incarcerated  
7 where he would remove his dressings and the staff  
8 would tell him to stop doing that, leave it on  
9 until -- let us handle it?

10       **A**     I saw that at least once or twice, yes.

11       **Q**     Okay. Can you say whether or not if that  
12 cast in March of '16 had remained on if -- if his  
13 wound would have healed?

14       **A**     Are you talking about the wound in the  
15 bottom of his foot?

16       **Q**     Yes.

17       **A**     No.

18       **Q**     No?

19       **A**     No, I couldn't say one way or the other.

20       **Q**     Okay. Did the biopsy of his foot negatively  
21 impact his foot?

22       **A**     Do you mean the one that didn't show an  
23 infection?

24       **Q**     Did you read the biopsy results?

25       **A**     Are you talking about the one you just

1 showed me?

2 Q Yes, sir.

3 A I didn't read the actual result. I read  
4 what the doctor said and it said it didn't show any  
5 osteomyelitis.

6 Q Okay. But did the biopsy -- he got a  
7 resulting infection from the biopsy; is that correct?

8 A He got cellulitis from an open wound after a  
9 biopsy, yes.

10 Q Okay. And, again, do you have any idea what  
11 Mr. Shipp was doing when he was on his own not in  
12 prison with regard to --

13 A Before or after?

14 Q After his incarceration.

15 A I know what he was doing before.

16 Q Yeah. Yeah. Yes, we do.

17 No, after he's released and he's on his own,  
18 so from August through July of 2017, do we know how he  
19 was personally caring for his foot when he was outside  
20 the medical?

21 A I do not.

22 Q Okay. When we were talking about the  
23 wheelchair instances, you referred to Dr. Peeples'  
24 report.

25 When did you look at that?

1           **A**     In the last month, but I couldn't tell you  
2 what day. Let's see, it looks like it got sent to me  
3 April 25.

4           **Q**     Okay.

5           **A**     So probably shortly after that.

6           **Q**     And is that what made you kind of look  
7 through records again to see if you could find what he  
8 was referring to?

9           **A**     Yes.

10          **Q**     Okay. And were you also provided with a  
11 copy of his records?

12          **A**     No.

13          **Q**     Okay. Do you know what the status of his  
14 charcot foot was back in 2012?

15          **A**     No, I do not.

16          **Q**     Okay. And then I know I mentioned '13  
17 either -- earlier, but have you reviewed records from  
18 2013?

19          **A**     Not that I recall, no.

20          **Q**     Okay. 2014?

21          **A**     No.

22          **Q**     Okay.

23          **A**     I just know that the foot was intact when he  
24 went into the -- to the prison.

25          **Q**     Okay. Do you know how his blood flow was at

1 yes.

2       Q     Okay. During your review of the records,  
3 other than what I've asked you about, did you see any  
4 other moments of noncompliance that was demonstrated  
5 by Mr. Shipp?

6       A     I mean, I looked at the records. I saw  
7 reports that you pointed out that Dr. Peeples pointed  
8 out. I saw also, you know, reports that they said he  
9 was taking care of himself and doing well on some  
10 pages too, so I -- I can't recall of anything specific  
11 that said he was grossly not taking care of himself  
12 after that time period.

13      Q     Okay. Would you consider a patient's  
14 noncompliance to contribute to a non-healing ulcer?

15      A     Depending on what the noncompliance was,  
16 it's certainly possible, yes.

17      Q     Okay. Now, in your report, you -- the next  
18 sentence, as I read one earlier, the last sentence of  
19 that first paragraph on page two, "Had Mr. Shipp been  
20 provided use of his prescription shoes, it is my  
21 opinion that he would not have developed blisters that  
22 ultimately led to the loss of his right leg to  
23 amputation."

24           Now, how can you say that?

25      A     Well, because he came into the facility

1 without them when he used his -- his orthopedic  
2 orthotics and shoes, and when he didn't have them was  
3 put in Crocs that are known to rub your feet and had  
4 abnormalities that he was a -- set up to get  
5 broken-down feet.

6       **Q**      I guess my question is: How do you know  
7 nothing else would have happened in that year and a  
8 half?

9       **A**      I don't know what would happen. I'm just  
10 looking at, you know, a guy that you're saying is  
11 non-compliant, doesn't care about his diabetes, but he  
12 asked to wear his orthotics and protect his feet and  
13 doesn't get them for three weeks and then has a hole  
14 and you wonder why he's mad about it.

15       So, I mean, that's what I'm saying in that  
16 sentence is that if he had been given those orthotics,  
17 then he wouldn't have gotten than sore that led to  
18 that year and a half of care before he had his leg cut  
19 off.

20       **Q**      Okay. Well, it said he would have not  
21 developed blisters.

22       I mean, he could have developed blisters  
23 anytime in that next year and a half; is that correct?

24       **A**      I was talking about that time where he was  
25 incarcerated and had no control of his situation. If

1 you're asking me if a guy can get a blister anytime  
2 when he's a diabetic, sure. But we're talking about  
3 this time where he had no control of his situation.  
4 He was in a prison, he had to follow the rules and do  
5 what they said and had no independent control of  
6 protecting his feet other than staying off of them.

7       **Q**     Do you know why he didn't get his shoes?

8       **A**     I know that he was supposed to request it  
9 and then it -- there was a delay. That's all I know.

10      **Q**     Okay.

11      **A**     You-guys would probably know a lot more  
12 about that than I would.

13      **Q**     Okay. I was just curious.

14            But anything could have happened in that  
15 next year and a half where he might have ended up  
16 getting an amputation?

17            MR. FRANSEEN: Object to form.

18      **Q**     (By Ms. Odum) Is that correct?

19      **A**     Anything can happen any day of the week.

20      **Q**     Right.

21      **A**     So to answer that question, I think anything  
22 can happen any day, any time, any place.

23      **Q**     Okay. Do you want me to -- you read  
24 Dr. Peeples' assessment of the missing wheelchair  
25 records that I think I still have tabbed.

1 CERTIFICATE

2 STATE OF OKLAHOMA )

3 ) SS:

4 COUNTY OF OKLAHOMA )

5

6 I, Abby Rhodes, CSR, RPR, do hereby certify  
7 that on June 13, 2019 at the offices of Shawn Smith,  
8 M.D., Oklahoma City, Oklahoma, there came before me  
9 SHAWN SMITH, M.D. who was duly sworn to testify the  
10 truth, the whole truth, and nothing but the truth; and  
11 that the foregoing pages constitute a full, true, and  
12 correct transcript of the deposition of said witness  
13 on the date as indicated.

14 I do further certify that I am not counsel,  
15 attorney, or relative of either party, or otherwise  
16 interested in the event of this suit. IN WHEREOF, I  
17 have hereunto set my hand and affixed my seal at  
18 my office in Oklahoma City Oklahoma County, Oklahoma,  
19 this 20th day of June, 2019.

20

21

22

23

24 \_\_\_\_\_,  
Abby Rhodes, CSR, RPR

25 CSR No. 1939.

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11/15/18

Derek Franseen  
Walsh & Franseen  
200 East 10<sup>th</sup> Street Plaza  
Edmond, OK 73034

RE: Craig Shipp

Dear Sir:

As you are aware, I have been requested to give my medical opinion regarding the cause of Mr. Craig Shipp's below the knee amputation. As my attached curriculum demonstrates and which is incorporated into this report by reference, I am a medical doctor current licensed to practice in the state of Oklahoma and in the state of Texas. I currently serve as Medical Director of Brain Injury at Jim Thorpe Rehabilitation Hospital. I have served as an Associate Medical Director for the past 23 years at Jim Thorpe Rehabilitation Hospital in Oklahoma City, Oklahoma. I have been board certified in Physical Medicine & Rehabilitation since 1993. By virtue of my education, training, and direct experience, I am qualified to render opinions that apply in this case.

Craig Shipp was presented by teleconference on 11/15/18 for an independent medical evaluation regarding injuries sustained during incarceration at Southwest Arkansas Community Correction Center in Texarkana, Arkansas. I have received copies of multiple medical records including Correct Care Solutions, Department of Corrections, Dr. DeHaan, Saint Michael's Hospital, UAMS (need to find the abbreviation), Wadley Wound Care, CCS, Dr. Jeffrey DeHaan, Wadley Regional Medical Center, Christus Saint Michael Rehabilitation Hospital, Wound Care Hyperbaric Center, Hanger Prosthetics and Orthotics, Mercy Clinical Hospital Fort Smith and River Valley, Mercy Hyperbaric and Wound Care, Ouachita River Correctional Unit and UAMS Medical Center.

In summary, Mr. Craig Shipp is a 40-year-old type II diabetic since 2010 that had a prior history of a right lower extremity Charcot joint and diabetic peripheral neuropathy which resulted in recurrent diabetic foot ulcers. Mr. Shipp was prescribed custom diabetic shoes and insoles to prevent development of additional foot ulcers from his Charcot joint and diabetic peripheral neuropathy.

2

EXHIBIT #	_____
DATE	_____
DEPOENT	_____
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Mr. Shipp was incarcerated after turning himself in on 02/01/2016 at Southwest Arkansas Correctional Center in Texarkana. Mr. Shipp requested the continued use of his prescription diabetic shoes to protect his feet from skin breakdown. Mr. Shipp's request was never honored. As a result, he developed blisters on his left foot on 02/08/2016 and blisters on his right foot in the areas of the Charcot joint on 02/12-02/14/2016. Despite appropriate wound care and studies confirming good circulation, the pressure ulcers on the right foot that developed due to lack of appropriate support and protection with prescription orthotics and shoe wear never healed and was the proximate cause for his subsequent below the knee amputation on 7/31/17. Had Mr. Shipp been provided use of his prescription shoes, it is my opinion that he would not have developed blisters that ultimately led to the loss of his right leg to amputation.

A full report of future needs associated with his right lower extremity amputation and his functional changes associated with the loss will be produced in the future.

The opinions above are based upon a reasonable degree of medical certainty. I reserve the right to amend my opinions and provide additional opinions in the event that additional medical records are provided for my review or a change in his medical condition occurs.

Regards,



Shawn Smith, M.D.